

FILED

FEBRUARY 3, 2010

KAREN S. MITCHELL
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

MARTIN PORTILLO, PRO SE,
TDCJ-CID No. 1185391,

Plaintiff,

v.

Mrs. NFN BROWN, Psych Dept.,

Defendant.

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2:07-CV-0031

ORDER ADOPTING FINDING OF FACT ON REMAND

The instant cause was remanded on November 17, 2009 to this Court for a determination of whether plaintiff delivered the notice of appeal in this cause to prison officials on or before May 28, 2009. On January 19, 2010, the Magistrate Judge, after noting that plaintiff made no submission on the issue and after considering the mail logs submitted by the Attorney General acting as Amicus Curiae, made the Finding of Fact on Remand that plaintiff deposited his Notice of Appeal into the internal mail system of the Clements Unit on or about June 15, 2009.

Plaintiff filed his objections to the Finding of Fact on Remand of the Magistrate Judge on February 2, 2010.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Finding of Fact on Remand, as well as the Objections filed by the plaintiff.

The Court is of the opinion that the objections of the plaintiff should be **OVERRULED** and the Finding of Fact on Remand of the United States Magistrate Judge should be **ADOPTED** by the United States District Court.

This Court, therefore, does **OVERRULE** plaintiff's objections, and does hereby **ADOPT** the Finding of Fact on Remand of the United States Magistrate Judge in this case that plaintiff

deposited his Notice of Appeal into the internal mail system of the Clements Unit on or about June 15, 2009.

The Clerk will transmit a copy of this Order to the United States Court of Appeals for the Fifth Circuit in order to supplement the record on appeal in this cause.

IT IS SO ORDERED.

ENTERED this 3rd day of February, 2010.

/s/ Mary Lou Robinson
MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE